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January 31, 2005

Via UPS Next Day Air

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

FEB 1 2005

Part of
Public Record

Re: AB-33 (Sub-No. 132X) - Union Pacific Railroad Company - Abandonment
Exemption - In Rio Grande and Mineral Counties, Colorado

Dear Mr. Williams:

This letter constitutes UP's reply to the Motion of Concerned Citizens of Creede and Mineral County, CO ("Citizens") for leave to file a reply to the replies of UP and D&RGHF. The Motion includes what Citizens characterize as a "limited reply," which rambles on for 11 pages.

Citizens' Motion should be denied and its proffered reply to the replies of UP and D&RGHF should be rejected as a blatant violation of the Board's rules of practice.

The Board's Rules of Practice unequivocally prohibit Citizens' Reply:

"Reply to a Reply. A reply to a reply is not permitted." 49 C.F.R. 1104.13(c)

Citizens only excuse for filing its prohibited "reply to a reply" is that they "are seeing for the first time the arguments of the Foundation and UP against their [Citizens] Petition to Reopen." (Citizens Motion, p. 1). That sort of justification can be made for any reply to a reply and, if it were accepted, STB proceedings would never end. Further, it strains credibility for Citizens to suggest that it couldn't anticipate that UP and DRGHF would challenge the propriety of reopening of an OFA sale that the Board approved over 5 ½ years ago, and which closed over 4 ½ years ago. All they had to do is look at the pleadings UP and D&RGHF filed in January 2004, or the Board's June 22, 2004 decision, to see that this would be an issue. The conclusion is inescapable that Citizens intended, from the time they filed their Petition to Reopen, to file an unauthorized reply to the UP and D&RGHF replies. The Board should not permit this kind of gamesmanship.

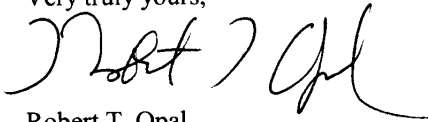
Robert T. Opal
General Commerce Counsel

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3072 fx. (402) 501-0132
rtopal@up.com

As we have previously pointed out, Citizens are actually seeking the forced abandonment of the Creede Line under the guise of challenging the OFA, relief that can only be obtained through an adverse abandonment application (UP December 16, 2004 Reply, pp. 6-10). If Citizens desired to assure themselves of the right to file the "last word" through a rebuttal, they should have filed a formal abandonment application, see, e.g., Docket No. AB-468 (Sub-No. 5X), Paducah & Louisville Ry., Inc. – Abandonment Exemption, (served June 20, 2003), pp. 1-2 and cases cited.

An additional ten (10) copies of this letter are enclosed for the Board's files.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert T. Opal", written in a cursive style.

Robert T. Opal
General Commerce Counsel
Direct dial: 402/544-3072
Fax: 402/501-0132

cc: w/o enclosures - Persons listed in Certificate of Service

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document upon the persons shown below. Service was made U.S. mail, postage prepaid, except as shown below.

Ronald M. Johnson
Heidi Ginst
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(via UPS Next Day Air)

Thomas McFarland
208 South LaSalle
Suite 1890
Chicago, IL 60604-1112

Karl Morrell
Ball Janik, L.L.P.
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005

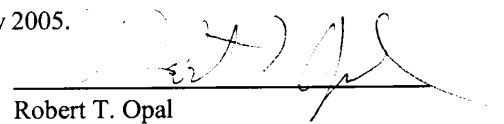
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036

Donald Shank
Denver & Rio Grande Railway Historical Foundation
20 North Broadway
Monte Vista, CO 81144

Martin O'Grady
Colorado Dept. of Public Health & Environment
4300 Cherry Drive South
Denver, CO 80022-1530

George M. Allen
206 Society Drive
Suite A
Telluride, CO 81435

Dated at Omaha, Nebraska, this 31st day of January 2005.


Robert T. Opal